

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA

IN RE:  
GARRETT PROPERTIES, LLC  
DEBTOR.

BANKRUPTCY CASE NO. 1520085  
Small Business Case under Chapter 11

**GARRETT PROPERTIES, LLC'S DISCLOSURE STATEMENT  
DATED SEPTEMBER 27, 2016**

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## I. INTRODUCTION

This is the disclosure statement (the “Disclosure Statement”) in the small business chapter 11 case of Garrett Properties, LLC. This Disclosure Statement contains information about the Debtor and describes the Plan (“the Plan”) filed by Garrett Properties, LLC on September 28, 2016. A full copy of the Plan is attached to this Disclosure Statement as Exhibit A. Your rights may be affected. You should read the Plan and this Disclosure Statement carefully and discuss them with your attorney. If you do not have an attorney, you may wish to consult one.

The proposed distributions under the Plan are discussed at pages 6-10 of this Disclosure Statement. General unsecured creditors are classified in Class 3, and will receive a distribution of 1% of their allowed claims.

### A. Purpose of This Document

This Disclosure Statement describes:

- The Debtor and significant events during the bankruptcy case,
- How the Plan proposes to treat claims or equity interests of the type you hold (*i.e.*, what you will receive on your claim or equity interest if the plan is confirmed),
- Who can vote on or object to the Plan,
- What factors the Bankruptcy Court (the “Court”) will consider when deciding whether to confirm the Plan,
- Why [the Proponent] believes the Plan is feasible, and how the treatment of your claim or equity interest under the Plan compares to what you would receive on your claim or equity interest in liquidation, and
- The effect of confirmation of the Plan.

Be sure to read the Plan as well as the Disclosure Statement. This Disclosure Statement describes the Plan, but it is the Plan itself that will, if confirmed, establish your rights.

### B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing

The Court has not yet confirmed the Plan described in this Disclosure Statement. This section describes the procedures pursuant to which the Plan will or will not be confirmed.

#### 1. *Time and Place of the Hearing to Finally Approve This Disclosure Statement and Confirm the Plan*

The hearing at which the Court will determine whether to finally approve this Disclosure Statement and confirm the Plan will take place on \_\_\_\_\_, at \_\_\_\_\_, in Bankruptcy Courtroom B, at the United States Courthouse, 300 Virginia Street, E, Charleston, WV 25301.

#### 2. *Deadline For Voting to Accept or Reject the Plan*

If you are entitled to vote to accept or reject the plan, vote on the enclosed ballot and return the ballot in the enclosed envelope to Pierson Legal Services, Attn: Tian Ballots, P. O. Box 2291, Charleston, WV 25328. See section IV below for a discussion of voting eligibility requirements.

Your ballot must be received by \_\_\_\_\_ or it will not be counted.

#### 3. *Deadline For Objecting to the Adequacy of Disclosure and] Confirmation of the Plan*

Objections to this Disclosure Statement or to the confirmation of the Plan must be filed

with the Court and served upon Pierson Legal Services, P. O. Box 2291, Charleston, WV 25328 and the United States Trustee, 2025 United States Courthouse, 300 Virginia Street, E, Charleston, WV 25301 by \_\_\_\_\_.

**4. Identity of Person to Contact for More Information**

If you want additional information about the Plan, you should contact:

James Pierson  
P. O. Box 2291  
Charleston, WV 25328  
304-925-2400  
jpierson@piersonlegal.com.

**C. Disclaimer**

**The Court has [conditionally] approved this Disclosure Statement as containing adequate information to enable parties affected by the Plan to make an informed judgment about its terms. The Court has not yet determined whether the Plan meets the legal requirements for confirmation, and the fact that the Court has approved this Disclosure Statement does not constitute an endorsement of the Plan by the Court, or a recommendation that it be accepted. [The Court’s approval of this Disclosure Statement is subject to final approval at the hearing on confirmation of the Plan. Objections to the adequacy of this Disclosure Statement may be filed until \_\_\_\_\_.]**

**II. BACKGROUND**

**A. Description and History of the Debtor’s Business**

The Debtor is a limited liability company. Since August 17, 2004, the Debtor has been in the business of owning, holding and renting commercial and residential real estate.

**B. Insiders of the Debtor**

Kimberly Garrett, is the sole owner, officer and member of the Debtor and the only “insider” as defined in §101(31) of the United States Bankruptcy Code (the Code).

Garrett Tire, Inc. is an affiliate of Garrett Properties as defined by §101(2)

The case of Garrett Properties, LLC was filed on February 24, 2015. That during the two years preceding that filing and during the pendency of the case, Kimberly Garrett, the sole insider as defined by §101(31) was paid the following compensation by the Debtor or its affiliate:

Payee:	2013	2014	2015	2016
Garrett Properties, LLC (Debtor):	\$ -0-	\$ -0-	\$ -0-	\$ -0-
Garrett Tire, Inc. (affiliate):	\$13,000	\$13,000	\$44,450	\$27,000

**C. Management of the Debtor Before and During the Bankruptcy**

During the two years prior to the date on which the bankruptcy petition was filed, the officers, directors, managers or other persons in control of the Debtor (collectively the “Managers”) were Kimberly Garrett.

The Managers of the Debtor during the Debtor’s chapter 11 case have been: Kimberly Garrett.

After the effective date of the order confirming the Plan, the directors, officers, and

voting trustees of the Debtor, any affiliate of the Debtor participating in a joint Plan with the Debtor, or successor of the Debtor under the Plan (collectively the "Post Confirmation Managers"), will be: Kimberly Garrett. The responsibilities and compensation of these Post Confirmation Managers are described in section \_\_\_\_\_ of this Disclosure Statement.

#### **D. Events Leading to Chapter 11 Filing**

The business operated by Garrett Tire, Inc., the affiliate of the Debtor is a successor business to the former Garret Tire Center, Inc., which was formed in January 29, 1985 by Donald L. Garrett and Mary Ellen Garrett, and operated a business similar to the business operated by Garrett Tire, Inc.

Mary Ellen Garrett died on May 9, 1992, leaving a Will which bequeathed her interest in Garrett Tire Center, Inc., to a Trust in favor of Kimberly A. Garrett. The Will of Mary Ellen Garrett also devised the property at Top of the World, Snowshoe to Kimberly A. Garrett.

After the death of Mary Allen Garrett, Donald L. Garrett, the father of Kimberly Garrett, commenced legal action against the Estate of Mary Ellen Garrett and Kimberly A. Garrett in order to dispute the ownership of Garrett Tire Center, Inc. That while the litigation was ongoing the Trust which was created by the Will of Mary Ellen Garrett terminated in 2002. Thereafter Kimberly Garrett and Donald L. Garrett entered into negotiations which resulted in a purchase by Kimberly Garrett of the assets of Garrett Tire Center, LLC., for full value<sup>1</sup> whereby the real estate assets of Garrett Tire Center, Inc., were transferred to Garrett Properties, LLC., and the personal property assets and business operations of the Garrett Tire Center, Inc. were transferred to Garrett Tire, Inc.

Garrett Tire, Inc., thereafter commenced operation of a business substantially the same as the business operated by Garrett Tire Center, Inc., at the location at 322 Washington Street, currently owned by Garrett Properties, LLC.

As part of this transaction on October, 2004 the 322 W. Washington Street property including the land and building was transferred from Garrett Tire Center, Inc. to Garrett Properties at an inflated price of \$410,000.00 by way of an SBA Guaranteed Loan extended by Fifth Third Bank.

Also during October, 2004 Fifth Third Bank generated an additional SBA Guaranteed Loan in the amount of \$125,000.00 which was likewise paid to Garrett Tire Center, Inc. purportedly to pay for the inventory and rolling stock of Garrett Tire Center, Inc.<sup>2</sup>

In addition to the SBA Guaranteed Term Loans, Fifth Third Bank also extended a One Hundred Thousand Dollar (\$100,000.00) working capital line of credit to Garrett Tire, Inc.

Subsequent to this financing, Kimberly Garrett acquired the following properties in her own name:

913 Greendale Drive/301 Swathmore from Alan Pennington  
1122 Edgewood Drive from Kinvin Roth and Lori A Ferrell  
2116 Derricks Creek Road  
303 T.O.W. Snowshoe  
Crescent Road Property from The Cary System, Inc. to Garret Properties

4/27/2005

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<sup>1</sup>According to the Trust, Kimberly Garrett Should have owned at least 50% or Garrett Tire Services, Inc. Outright but appears not to have been given credit for any of the property inherited from her mother during the negotiations.

<sup>2</sup>According to the Trust, Kimberly Garrett Should have owned at least 50% or Garrett Tire Services, Inc. Outright but appears not to have been given credit for any of the property inherited from her mother during the negotiations.

Thereafter, Garrett Tire and Garrett Properties continued operations until on or about January 11 2009, when Kimberly Garrett was approached by Michelle Chapman and Patti Epling who solicited her to move her business to Huntington Banks. As an inducement to apply for a number of fixed payment loans, Ms. Garrett was assured that in addition to the fixed payment loans, she would be extended a working capital line of credit once the other loans were closed.

Thereafter, Huntington Banks extended two loans to Garrett Properties, LLC as follows:

\$480,000.00 Loan to Garrett Properties, LLC secured by the property located at 322 Washington Street, currently owned by Garrett Properties, LLC

\$320,000.00 Loan to Garrett Properties, LLC secured by the property located at:  
913 Greendale Drive/301 Swathmore  
1122 Edgewood Drive  
303 T.O.W. Snowshoe

All of which was owned personally by Kimberly A. Garrett

Although Huntington Banks extended two loans, notwithstanding the assurances of its representatives Michelle Chapman and Patti Epling, Huntington Banks never extended the working capital line of credit which left both companies without sufficient working capital. Also rather than fully amortizing loans, Huntington Banks booked the loans as "balloon payment" loans which assured maximum renewal fees to the bank. After extracting a number of renewals on various balloon payments Huntington Banks declined further renewals or refinancing.

Although the Debtor made negotiated payments to the bank throughout the period leading up the filing, the Bank ultimately refused to accept anything less than the payoff of both loans thereby forcing the Debtor into default and subsequently this Chapter 11 Bankruptcy.

#### E. Significant Events During the Bankruptcy Case

Garrett Properties, LLC was filed on February 24, 2015, the Debtor applied to hire its counsel James Pierson (Docket #36) on July 15, 2015 which was granted on August 12, 2015 (Docket #40); to hire a Realtor, Judy Boggess (Docket #42) on August 13, 2015 which was granted on September 14, 2015 (Docket #51) to hire its accountant John Empson (Docket #41) on August 13, 2015 which was granted on September 17, 2015 (Docket #53).

On March 23, 2015, Huntington Bank filed their Motion to Lift Stay regarding real estate located at 322 West Washington, Charleston, (Docket #10), and the Debtor filed their Reply to Huntington Bank's Motion to Lift Stay on April 29, 2015, (Docket #20);

That the Debtor then proposed to surrender of all of the real estate securing the \$320,000.00 loan to Garrett Properties, LLC (Proof of Claim #1-1), and concentrate on its core business, but Huntington Bank requested that the Debtor retain the rental property and invest monies into the property to make it ready for sale.

That a hearing was held on June 17, 2015, during which it was agreed that the Debtor would make adequate protection payments to Huntington Banks and a proposed Agreed Order was submitted by Debtor, (Docket #31) and thereafter entered by the Court on July 6, 2015, (Docket #33) resolving Huntington Banks Motion to Lift Stay.

That from June 17, 2015 to the present date, the Debtor has made each and every Adequate Protection Payment as they came due and has invested money in the rental property to make it rentable and marketable in accordance with the request of Huntington Bank.

That consistent with its pre-petition actions and notwithstanding the Debtors compliance

with the Adequate Protection Order and the request of Huntington Banks, on February 19, 2016, Huntington Banks filed their Motion to Dismiss, (Docket #68).

That due to its receipt of ongoing adequate protection payments, Huntington Bank is the only creditor whose position has improved during the pendency of this action.

That dismissal of this case would not only result in liquidation of the Debtor, but would result in the termination of the business operation of Garrett Tire and the termination of 10 jobs provided by that company.

That consistent with its pre-petition actions, Huntington Banks, in its Motion to Dismiss (Docket #68) represented that it advocated that the Debtor sell the 322 Washington Street Property where the Garrett Tire business is operated.

That consistent with Huntington Banks, Motion to Dismiss and its stated desire that the Debtor Sell the Washington Street property, on May 17, 2016 the Debtor filed is Motion to sell Real Estate Free and Clear of Liens and Encumbrances (Docket #87).

That consistent with its past actions, upon receiving said Motion, Huntington Banks reversed its position and opposed the sale of the Washington Street property (Docket #92) by which it now opposes the very sale that they previously championed (Docket #92) .

There have been no asset sales outside the ordinary course of business, debtor in possession financing or cash collateral orders. No adversary proceeding have been filed or other significant litigation that has occurred except that the Debtor has objected to claims for which a proof of claim have not been filed.

The Debtor has undertaken to complete repairs on certain rental properties upon which Huntington Banks holds a lien which would improve operations and profitability of the Debtor, but Huntington Banks has both insisted upon and interfered with these efforts.

**F. Projected Recovery of Avoidable Transfers [Choose the option that applies]**

The Debtor does not intend to pursue preference, fraudulent conveyance, or other avoidance actions.

**G. Claims Objections**

Except to the extent that a claim is already allowed pursuant to a final non-appealable order, the Debtor reserves the right to object to claims. Therefore, even if your claim is allowed for voting purposes, you may not be entitled to a distribution if an objection to your claim is later upheld. The procedures for resolving disputed claims are set forth in Article V of the Plan.

**H. Current and Historical Financial Conditions**

Prior to the bankruptcy proceeding the Debtor did not prepare monthly or annual financial statements.

The accountant for the Debtor has prepared a summary of the Debtor's periodic operating reports filed since the commencement of the Debtor's bankruptcy case is set forth in Exhibit

**III. SUMMARY OF THE PLAN OF REORGANIZATION AND TREATMENT OF CLAIMS AND EQUITY INTERESTS**

**A. What is the Purpose of the Plan of Reorganization?**

As required by the Code, the Plan places claims and equity interests in various classes and describes the treatment each class will receive. The Plan also states whether each class of claims or equity interests is impaired or unimpaired. If the Plan is confirmed, your recovery will be limited to the amount provided by the Plan.

**B. Unclassified Claims**

Certain types of claims are automatically entitled to specific treatment under the Code. They are not considered impaired, and holders of such claims do not vote on the Plan. They may, however, object if, in their view, their treatment under the Plan does not comply with that required by the Code. As such, the Plan Proponent has *not* placed the following claims in any class:

**1. Administrative Expenses**

Administrative expenses are costs or expenses of administering the Debtor's chapter 11 case which are allowed under § 507(a)(2) of the Code. Administrative expenses also include the value of any goods sold to the Debtor in the ordinary course of business and received within 20 days before the date of the bankruptcy petition. The Code requires that all administrative expenses be paid on the effective date of the treatment under the Plan:

The following chart lists the Debtor's estimated administrative expenses, and their proposed treatment under the Plan:

Type	Estimated Amount Owed	Proposed Treatment
Expenses Arising in the Ordinary Course of Business After the Petition Date		Paid in full on the effective date of the Plan or according to terms of obligation if later
The Value of Goods Received in the Ordinary Course of Business Within 20 Days Before the Petition Date		Paid in full on the effective date of the Plan, or according to terms of obligation if later
Professional Fees, as approved by the Court		Paid in full on the effective date of the Plan, or according to separate written agreement, or according to court order if such fees have not been approved by the Court on the effective date of the Plan
Clerk's Office Fees		Paid in full on the effective date of the Plan
Other administrative expenses		Paid in full on the effective date of the Plan or according to separate written agreement
Office of the U.S. Trustee Fees		Paid in full on the effective date of the Plan
<b>TOTAL</b>		



2. Priority Tax Claims

Priority Tax Claims Priority tax claims are unsecured income, employment, and other taxes described by 507(a)(8) of the Code. Unless the holder of such a § 507(a)(8) priority tax claim agrees otherwise, it must receive the present value of such claim, in regular installments paid over a period not exceeding 5 years from the order of relief. The following chart lists the Debtor's estimated § 507(a)(8) priority tax claims and their proposed treatment under the Plan:

Description (name and type of tax)	Estimated	Date of Assessment	Treatment
			Pmt interval = [Monthly] payment = Begin date = End date = Interest Rate % = Total Payout Amount = \$
			Pmt interval = [Monthly] payment = Begin date = End date = Interest Rate % = Total Payout Amount = \$

C. Classes of Claims and Equity Interests

The following are the classes set forth in the Plan, and the proposed treatment that they will receive under the Plan:

1. Classes of Secured Claims

Allowed Secured Claims are claims secured by property of the Debtor's bankruptcy estate (or that are subject to setoff) to the extent allowed as secured claims under § 506 of the Code. If the value of the collateral or set off's securing the creditor's claim is less than the amount of the creditor's allowed claim, the deficiency will [be classified a general unsecured claim.]

The following chart lists all classes containing Debtor's secured prepetition claims and their proposed treat under the Plan:

CLASS	Description	Insider? (Yes or No)	Impairment	Treatment

Secured claim of: Huntington Banks Collateral: 322 Washington Street, WV Allowed Secured Amount: \$336,000.00		Impaired	Monthly Payments: \$1,775.00 Interest Rate: 4% (prime plus .5%) Amortized over 30 years
Secured Claim of: Huntington Banks Collateral: Snowshoe, 1122 Edgewood, 913 Greendale Allowed Secured Amount: \$27,910.00 \$85,000.00		Impaired	Monthly payments: \$1,188.21 Interest Rate: 4% (prime plus.5%) Amortized over 30 years

CLASS	Description	Insider? (Yes or No)	Impairment	Treatment
	Secured claim of: Michael Carey 720-724 Cresent Road, Charleston, WV Allowed Secured Amount: \$16,000.00 Priority of lien:		Impaired	Monthly Payments: \$295.00 Interest Rate: 4% (prime plus .5%) Amortized over 5 years
	Secured Claim of: Top of World Condo Association Collateral: 303A Snowshoe Allowed Secured Amount: \$14,590.00 Proof of Claim		Impaired	Monthly payments: \$269.00 Interest Rate: 4% (prime plus.5%) Amortized over 5 years

**2. Classes of Priority Unsecured Claims**

Certain priority claims that are referred to in §§ 507(a)(1), (4), (5), (6), and (7) of the Code are required to be placed in classes. The Code requires that each holder of such a claim receive cash on the effective date of the Plan equal to the allowed amount of such claim. However, a class of holders of such claims may vote to accept different treatment.

The following chart lists all classes containing claims under §§ 507(a)(1), (4), (5), (6), and (a)(7) of the Code and their proposed treatment under the Plan:

Class #	Description	Impairment	Treatment
	Priority unsecured claim pursuant to Section [insert]	[State whether impaired or unimpaired]	
	Priority unsecured claim pursuant to section [insert]	[State whether impaired or	

**3. Class of General Unsecured Claims**

General unsecured claims are not secured by property of the estate and are not entitled to priority under § 507(a) of the Code.

The following chart identifies the Plan's proposed treatment of general unsecured claims against the Debtor:

Class #	Description	Impairment	Treatment
	General Unsecured Class	impaired	Paid 1% of proof of claim

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**4. Class of Equity Interest Holders**

Equity interest holders are parties in interest) in the Debtor. In a corporation, entities holding preferred or common stock are equity interest o is a debtor, the Debtor is the equity interest holder.

The following chart sets forth the Plan’s proposed treatment of the class[es] of equity interest holders:

Kimberly	Equity interest holders	unimpaired	

**D. Means of implementing Plan**

**1. Source of Payments**

Payments and distributions under the Plan will be funded both by the ongoing operating income of the Debtor and by sale of assets as allowed hereunder.

**2. Post-confirmation Management**

The Post-Confirmation Managers of the Debtor, and their compensation, shall be as follows:

Name	Affiliations	Insider (yes or	Position	Compensation
Kimberly Garrett		Yes	owner/manager	-0-

**E. Risk Factors**

This Debtor has already weathered the severe economic downturn in the nationwide economy as well as the catastrophic downturn in the coal industry from which it received a substantial portion of it’s business. Throughout that time

the Debtor has successfully continued its operations both by concentrating on sales of tires to consumers and relying on services rendered by the company such as mechanical repairs to automobiles.

The Debtor has demonstrated throughout the pendency of the bankruptcy that it has the ability to timely pay the amounts due under the plan most of which have been paid to Huntington Banks as adequate protection payments. During that same period of time, the Debtor has paid its administrative expenses and ongoing costs of operations without interruption, including all post petition taxes.

Because of the foregoing the risk factors involved in this plan are very low, and so, all calculations of interest have been based upon the case of *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004) using the current New York prime rate of 3.5%, and a risk factor of 500 basis points (0.5%), in establishing a 4% rate of interest to apply to secured claims and their payment).

The plan provides for both payment over time of the amounts due to creditors and provides for sale of the property in the event that sale would be more advantageous to the Debtor and its creditors.

#### F. Executory Contracts and Unexpired Leases

The only executory contact to be assumed is an unexpired leases with the affiliate company Garrett Tire, Inc. and the Debtor will assume that agreement under the Plan. Assumption means that the Debtor has elected to continue to honor this contract.

If you object to the assumption of your unexpired lease or executory contract, the proposed cure of any defaults, or the adequacy of assurance of performance, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan, unless the Court has set an earlier time.

All other executory contracts and unexpired leases will be rejected under the Plan. Consult your adviser or attorney for more specific information about particular contracts or leases.

If you object to the rejection of your contract or lease, you must file and serve your objection to the Plan within the deadline for objecting to the confirmation of the Plan.

*The Deadline for Filing a Proof of Claim Based on a Claim Arising from the Rejection of a Lease or Contract Is Any claim based on the rejection of a contract or lease will be barred if the proof of claim is not timely filed, unless the Court orders otherwise.*

#### G. Tax Consequences of Plan

*Creditors and Equity Interest Holders Concerned with How the Plan May Affect TaxLiability Should Consult with Their Own Accountants, Attorneys, And/Or Advisors.*

The following are the anticipated tax consequences of the Plan: The general tax consequences to the Debtor of the Plan is that the debtor may be required to recognize discharge of indebtedness income on its subsequent tax return. The general tax consequences on creditors of any discharge, is that certain creditors may receive tax benefits from the write off of the discharged debt.

#### IV. CONFIRMATION REQUIREMENTS AND PROCEDURES

To be confirmable, the Plan must meet the requirements listed in §§ 1129(a) or (b) of the Code. These include the requirements that: the Plan must be proposed in good faith; at least one impaired class of claims must accept the plan, without counting votes of insiders; the Plan must distribute to each creditor and equity interest holder at least as much as the creditor or equity interest holder would receive in a chapter 7 liquidation case, unless the creditor or equity interest holder votes to accept the Plan; and the Plan must be feasible. These requirements are not the only requirements listed in § 1129, and they are

not the only requirements for confirmation.

#### A. Who May Vote or Object

Any party in interest may object to the confirmation of the Plan if the party believes that the requirements for confirmation are not met.

Many parties in interest, however, are not entitled to vote to accept or reject the Plan. A creditor or equity interest holder has a right to vote for or against the Plan only if that creditor or equity interest holder has a claim or equity interest that is both (1) allowed or allowed for voting purposes and (2) impaired.

In this case, the Plan Proponent believes that classes A through F are impaired and that holders of claims in each of these classes are therefore entitled to vote to accept or reject the Plan.

##### 1. *What Is an Allowed Claim or an Allowed Equity Interest?*

Only a creditor or equity interest holder with an allowed claim or an allowed equity interest has the right to vote on the Plan. Generally, a claim or equity interest is allowed if either (1) the Debtor scheduled as disputed, contingent, or unliquidated, or (2) the creditor has filed a proof of claim or equity interest, unless an objection has been filed to such proof of claim or equity interest. When a claim or equity interest is not allowed, the creditor or after notice and hearing, either overrules the objection or allows the claim or equity interest for voting purposes pursuant to Rule 3018(a) of the Federal Rules of Bankruptcy Procedure.

The deadline for filing a proof of claim in this case was .

##### 2. *What is an Impaired Claim or Impaired Equity Interest?*

As noted above, the holder of an allowed claim or equity interest has the right to vote only if it is in a class that is *impaired* under the Plan. As provided in § 1124 of the Code, a class is considered impaired if the Plan alters the legal, equitable, or contractual rights of the members of that class.

##### 3. Who is Not Entitled to Vote

The holders of the following five types of claim and equity interests are not entitled to vote:

- holders of claims and equity interests that have been disallowed by an order of the Court;
- holders of other claims or equity interests that are not “allowed claims” or “allowed equity interests” (as discussed above), unless they have been allowed” for voting purposes.
- holders of claims or equity interests in unimpaired classes;
- holders of claims entitled to priority pursuant to §§ 507(a)(2), (a)(3), and (a)(8) of the Code; and
- holders of claims or equity interests in classes that do not receive or retain any value under the Plan;
- administrative expenses.

*Even If You Are Not Entitled to Vote on the Plan, You Have a Right to Object to the Confirmation of the Plan and to the Adequacy of the Disclosure Statement.*

##### 4. *Who Can Vote in More Than One Class*

A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim, or who otherwise hold claims in multiple classes, is entitled to accept or reject a Plan in each capacity, and should cast one ballot for each claim.

#### B. Votes Necessary to Confirm the Plan

If impaired classes exist, the Court cannot confirm the Plan unless (1) at least one impaired class of creditors has accepted the Plan without counting the votes of any insiders within that class, and (2) all impaired classes have voted to accept to be confirmed by A “cram down” on non-accepting classes, as discussed later in Section [B.2.].

*1. Votes Necessary for a Class to Accept the Plan*

A class of claims accepts the Plan if both of the following occur: (1) the holders of more than one half (1/2) of the allowed claims in the class, who vote, cast their votes to accept the Plan, and (2) the holders of at least two-thirds (2/3) in dollar amount of the allowed claims in the class, who vote, cast their votes to accept the Plan.

A class of equity interests accepts the Plan if the holders of at least two-thirds (2/3) in amount of the allowed equity interests in the class, who vote, cast their votes to accept the Plan.

*2. Treatment of Non-accepting Classes*

Even if one or more impaired classes reject the Plan, the Court may nonetheless confirm the Plan if the nonaccepting classes are treated in the manner prescribed by § 1129(b) of the Code. A plan that binds nonconsensual confirmation except the voting requirements of § claim or equity interest, as the variations on this general rule are numerous and complex.

**C. Liquidation Analysis**

To confirm the Plan, the Court must find that all creditors and equity interest holders who do not accept the Plan will receive at least as much under the Plan as such claim and equity interest holders would receive in a chapter 7 liquidation. A liquidation analysis is attached to this Disclosure Statement as Exhibit \_\_\_\_\_ .

**D. Feasibility**

The Court must find that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtor or any successor to the Debtor, unless such liquidation or reorganization is proposed in the Plan.

**1. Ability to Initially Fund Plan**

The Plan Proponent believes that the Debtor will have enough cash on hand on the effective date of the Plan to pay all the claims and expenses that are entitled to be paid on that date. Tables showing the amount of cash on hand on the effective date of the Plan, and the sources of that cash are attached to this disclosure statement as Exhibit \_\_\_\_\_ .

**2. Ability to Make Future Plan Payments And Operate Without Further Reorganization**

The Plan Proponent must also show that it will have enough cash over the life of the Plan to make the required Plan payments.

The Plan Proponent has provided projected financial information. Those projections are listed in Exhibit \_\_\_\_\_

The Plan Proponent's financial projections show that the Debtor will have an aggregate annual average cash flow, after paying operating expenses and post confirmation taxes, of \$ \_\_\_\_\_. The final Plan payment is expected to be paid on \_\_\_\_\_ .

[Summarize the numerical projections, and highlight any assumptions that are not in accord with past experience. Explain why such assumptions should now be made.]

*You Should Consult with Your Accountant or other Financial Advisor If You Have Any Questions Pertaining to These Projections.*

**V. EFFECT OF CONFIRMATION OF PLAN**

**A. Discharge.**

On the effective date of the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, subject to the occurrence of the effective date, to the extent specified in § 1141(d)(1)(A) of the Code, except that the Debtor shall not be discharged of any debt (i) imposed by the Plan, (ii) of a kind specified in § 1141(d)(6)(A) if a timely complaint was filed in accordance with Rule 4007 of the Federal Rules of Bankruptcy Procedure, or (iii) of a kind specified in § 1141(d)(1)(B). After the effective date of the Plan your claims against the Debtor will be limited to the debts described in clauses (i) through (iii) of the preceding sentence.



**B. Modification of Plan**

The Plan Proponent may modify the Plan at any time before confirmation of the Plan. However, the Court may require a new disclosure statement and/or revoting on the Plan. The Plan Proponent may also seek to modify the Plan at any time after confirmation only if (1) the Plan has not been substantially consummated, (2) extend or reduce the time period for such payments, or (3) alter the amount of distribution to a creditor whose claim is provided for by the Plan to the extent necessary to take account of any payment of the claim made other than under the Plan.

**C. Final Decree**

Once the estate has been fully administered, as provided in Rule 3022 of the Federal Rules of Bankruptcy Procedure, the Plan Proponent, or such other party as the Court shall designate in the Plan Confirmation Order, shall file a motion with the Court to obtain a final decree to close the case. Alternatively, the Court may enter such a final decree on its own motion.

**VI. OTHER PLAN PROVISIONS**

**A. Post Confirmation Sale of Property Subject to Liens**

After confirmation of the Plan the Debtor may elect to sell any property including property which is the subject of a lien as long as the such sale results in payment to the lienholder of at least an amount equal to the then present value of the creditor's claim. Payment of the then present value of the creditor's claim will discharge the creditor's lien upon the property secured thereby.

By: Kimberly A. Garrett  
GARRETT PROPERTIES LLC  
Plan Proponent

By: [Signature]  
/s/ James M. Pierson, Esq.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**IN RE:  
GARRETT PROPERTIES, LLC**

**CHAPTER 11**

**DEBTOR.**

**Bankruptcy Case No. 15-20085**

**CERTIFICATE OF SERVICE**

I, James M. Pierson, attorney for the Debtor, certify that a true and exact copy of the foregoing *Disclosure Statement* was hereby served by placing a true and exact copy thereof in the United States mail, postage pre-paid on this 28<sup>th</sup> day of September, 2016, as follows:

Office of the U.S. Trustee  
Robert C. Byrd Federal Courthouse  
300 Virginia Street, East, Room 2025  
Charleston, WV 25301

Michael R. Proctor  
Dinsmore & Shohl, LLP  
215 Don Knotts Blvd., Suite 310  
Morgantown, WV 26501

Dated: September 28, 2016

/s/ James M. Pierson  
James M. Pierson, Esq. (WVSB#2907)  
PIERSON LEGAL SERVICES  
P.O. Box 2291  
Charleston, WV 25328  
(304) 925-2400 - telephone  
(304) 925-2603 - facsimile  
*Counsel for Debtor*